No Resolution in Sight in Debate on Gun-Control Laws

Alan E Garfield
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The 146th Wilmington Memorial Day will step off Thursday, Memorial Day Parade in Bear.

Visit local war memorials on this Memorial/Decoration Day designated in 1971 by Congress. But most town, Conn., also will be honored, the Delaware Militia, being a part of American reserve forces since the Revolutionary War.

The question for the future is what the court will do with this constitutional right. The one thing that’s certain is that the court has no intention of invalidating all or even most gun regulations.

To answer that question, Scalia did a painstaking historical analysis to discern the original intent behind the Second Amendment. This led him to conclude that the amendment was meant to protect non-military uses of weapons, including, as in Heller, for self-defense. His four conservative colleagues agreed.

Justice John Paul Stevens, in a dissent joined by his three liberal colleagues, said that the 1939 decision had reached the larger question and rejected the Second Amendment’s application to non-military uses. Nevertheless, he did his own painstaking historical analysis and found that it supported this conclusion.

Readers should recall that the five conservatives outnumbered the four liberals. So the conservatives’ conclusion—that there is a constitutional right to use weapons for non-military purposes—prevailed.

The question for the future is what the court will do with this constitutional right. The one thing that’s certain is that the court has no intention of invalidating all or even most gun regulations.

Scalia himself emphasized that “the right secured by the Second Amendment is not unlimited.” So you can ignore gun rights advocates when they rhetorically ask “What part of the Second Amendment’s ‘shall not be infringed’ do you not understand?” No justices think Second Amendment rights are absolute any more than they think freedom of speech allows people to falsely yell fire in a crowded theater or freedom of religion allows people to conduct human sacrifices.

Still, thanks to Heller, judges now can overturn gun regulations as unconstitutional. But whether it’s wise for judges to do so is another question.

Harry Themal has written a News Journal excellent history of that urban monument. But most of Delawareans in World War I, Korea, Vietnam and the least-known, Spanish-American War. It has a monument, originally dedicated only in the aftermath of the Newtown, Conn., tragedy. But while the amendment can fit easily on a notecard (“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed”), its meaning remains highly contested.

The sharpest debate is over the relationship between the two clauses. Those opposing an expansive right to bear arms say that the first clause limits the second. Consequently, they contend that the right to bear arms means only a right to possess a firearm in connection with militia service.

Those supporting an expansive right reject the idea that the first clause limits the second. They assert that the right to bear arms includes a right to use a weapon for any lawful purpose, including nonmilitary uses.

For decades, lower court judges assumed that the former interpretation controlled. This was based on a 1939 Supreme Court decision that upheld an indictment for transporting a sawed-off shotgun. In that decision, the court rejected a Second Amendment challenge by explaining that possession of a sawed-off shotgun had no “reasonable relationship to the preservation or efficiency of a well regulated militia.”

That’s where things stood until the Supreme Court’s 2008 decision in District of Columbia v. Heller. Heller was a challenge to District of Columbia laws that limited handgun possession and required home-owners to keep all firearms disassembled or bound by a trigger lock. Justice Antonin Scalia, who wrote the majority opinion, said that these laws effectively prohibited the possession of a usable handgun in the home.

Scalia was undeterred by the court’s 1939 precedent, which he said decided only that sawed-off shotguns were not the “type of weapon” the Second Amendment protected. He said the court never reached the larger question of whether the Second Amendment protected non-military uses of weapons.

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